IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 110 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYESHBHAI MAGANBHAI BARIA - Appellant(s)
Versus
DR.MANRANJAN MOHANLAL VARIA & 2 - Defendant(s)

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Appearance :

MR HARSHADRAY A DAVE for Appellant(s) : 1,1.2.1 MR HARDIK A DAVE for Appellant(s) : 1,1.2.1
MR YM THAKKAR for Defendant(s) : 1,
RULE SERVED for Defendant(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 17/01/2007

ORAL JUDGMENT

1. Mr.Harshadray A.Dave, learned counsel for the appellants and Mr.Y.M. Thakkar, learned counsel for the respondent

No.1. None for the respondent Nos.2 and 3, though served.

2. The parties are finally heard.

3. The plaintiff – respondent No.1 had filed a suit submitting inter-alia that the defendant was not entitled to raise a hut or construction on the land from where the plaintiff had a right to pass, he also prayed that the respondent, specially the State Government and Godhra Nagar Palika be restrained from regularizing the construction of the hut on the property. He also prayed that any construction raised by the defendant on the land in dispute be demolished.

4. It appears that during the pendency of the suit, the plaintiff had purchased the property and therefore, made an application for amendment submitting inter-alia that he is owner of the property, the defendant be directed to hand over the possession of the property to the plaintiff. The amendment was opposed by the defendant, but, however, the same was allowed by the learned trial court. The learned trial court, after casting issues, allowed the parties to lead evidence, oral and documentary. The plaintiff filed his title deed and also examined witnesses in support of his case and claim. The defendant also

examined witnesses and filed unstamped and unregistered sale deed showing conveyance of the land in dispute in favour of the defendant. However, during the course of the cross examination, the defendant made a categorical admission that he has no right in the land in dispute or the hut constructed over the said land. The trial court after hearing the parties decreed the suit and as the appeal proved futile, the appellant – defendant has filed the present appeal.

5. The appeal has been admitted for hearing the parties on 1/8/2006 on the following substantial question of law;

(i) Whether on the facts and in the circumstances of the case the trial court erred in law in allowing the plaintiff to amend the plaint, effectively changing the complexion of the suit?

(ii) Whether on the facts and in the circumstances of the case, the lower courts were right in law in declaring the appellant a trespasser, when undisputedly the appellant became owner of the suit property as a purchaser, prior to purchase of the suit land by respondent No.1 from the original owner of the land?

(iii) Whether on the facts and in the circumstances of the

case, the lower courts were right in law by not exhibiting a proved document Mark 46/6?

6. Mr.Dave, learned counsel for the appellant submitted that in the suit which was based on the foundation of easement, an amendment raising the question of title, could not be allowed. He submits that the nature of the suit was changed, which had adversely affected the right of the defendant. It also submitted that the defendant had purchased the property much before the sale deed was executed in favour of the plaintiff and as such, the defendant could not be termed to be a trespasser. It is also submitted that the learned courts below were not justified in not marking the document as Mark No.46/6 and further erred in not taking the same into consideration.

7. Mr.Thakkar, learned counsel for the defendant - respondent No.1, on the other hand, submitted that the amendment was not to change the nature of the suit, but was simply to change the nature of the relief. According to him, if after the purchase of the property, the plaintiff was entitled to file a fresh suit seeking relief of possession, then, to avoid multiplicity of litigations, such

amendment could be allowed. It is also submitted that the courts were justified in not exhibiting the document Mark 46/6, because, it was a conveyance deed relating to immovable property, the same was not properly stamped and was not registered in accordance with sec.17 of the Indian Registration Act. He submits that if such document is ignored from consideration, there is no other title deed in favour of the defendant.

8. So far as granting of the amendment is concerned, the settled law is that if an amendment does not cause an prejudice or surprise to the other side, then, the same should ordinarily be allowed, to avoid multiplicity of the litigations.

9. In the present case, the plaintiff was seeking a relief that the defendant be declared not to have any right to raise construction on the plot as the plaintiff had some existing right of easement in the property. If during the pendency of the suit, he had purchased the property and is still claiming that the defendant had no right in the property, then, such an amendment could certainly be allowed, because, on an additional fact and subsequent event, the plaintiff was entitled to further and better relief. In the opinion of this Court, the trial court was not unjustified in

granting the amendment.

10. So far as the argument of title deed (document Mark 46/6) in favour of the defendant is concerned, the same is unstamped and unregistered. Sec.17 of the Indian Registration Act provides that when a tangible immovable property worth Rs.100/- or more is transferred under the provisions of sec.54 or other provisions of Transfer of Property Act, then the same shall be by a document which would be compulsorily registrable. The proviso only says that, in case, where tangible immovable property is worth less than Rs.100/-, then the sale of the property can be concluded by delivery of possession and acceptance of the price. The present is not a case where the property had passed over on an oral sale. I can understand a case where the property was transferred by delivery of possession and receiving the price. If such was the case, there was no need of document, but in the present case, a document to evince sale transaction has been executed. Once a document is executed, then, sec.54 of Transfer of Property Act read with sec.17 and sec.49 of the Indian Registration Act would make it incumbent upon the parties to the document to get the document registered. If the said document is not

registered, the party purchasing the property would not be entitled to say that though the document is unregistered, but the holder of the document be deemed tobe the owner of the property. The courts below, in the opinion of this Court, were absolutely justified in holding that the document Mark 46/6 was not admissible in evidence and did not convey any title in favour of the defendant - appellant.

11. For the reasons aforesaid, I hold that the two courts below were justified in decreeing the suit and granting the relief in favour of the plaintiff. The appeal deserves to and is accordingly dismissed. No costs. Let a decree be framed accordingly.

12. At this stage, Mr.Dave, learned counsel for the appellants submit that the appellants be provided some time to remove the hutments and his belongings.

13. If within a period of fifteen days from today, the appellant furnishes a written undertaking-cum-affidavit before the trial court that within a period of three months from today, he shall remove his possession and hand over peaceful possession to the plaintiff, then the execution of

this decree shall remain in abeyance for three months, but, in case, the appellant does not furnish such an undertaking within a period of 15 days, then, this order shall lose its efficacy and the decree would be executable on 16th day from today.

14. In view of the final dismissal of the appeal, order on Civil Application No.8889 of 2006 are not necessary.

15. Interim relief granted earlier is vacated subject to the aforesaid liberty.

(R.S. GARG, J.)

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